

SETTLEMENT AGREEMENT

by and among

**New Jersey Department of Environmental Protection
and
Administrator of the New Jersey Spill Compensation Fund**

and

Sayreville Seaport Associates, L.P.

Dated as of _____, 2008

SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT (this "Settlement Agreement") is made and entered into as of _____, 2008, effective as of the Effective Date, by and among the New Jersey Department of Environmental Protection (the "NJDEP"), the Administrator of the New Jersey Spill Compensation Fund (collectively, the "Department") and Sayreville Seaport Associates, L.P ("SSA") (collectively, "the Parties").

FINDINGS

1. SSA is a limited partnership organized and existing under the laws of the State of Delaware, with a principal place of business located at 2701 Renaissance Boulevard, 4th Floor, King of Prussia, Pennsylvania. SSA has been selected by the Sayreville Economic and Redevelopment Agency ("SERA") to redevelop 440 acres of real property on the Raritan River, near Raritan Bay in Sayreville, New Jersey. SSA will become the ground lessee of that Property through several scheduled closings and will ultimately become the fee simple owner of that Property.
2. The discharges that are the subject of this Settlement Agreement occurred at 1000 Chevalier Avenue, Sayreville Borough, Middlesex County, New Jersey and designated as the blocks and lots listed in Appendix A to this Settlement Agreement, on the tax maps of Sayreville Borough, Middlesex County, New Jersey ("the Property").
3. NL Industries, Inc., a New Jersey corporation ("NL") and NL Environmental Management Services, Inc., a New Jersey corporation ("NL EMS" and, together, the "NL Companies") were the owners of the Property and conducted industrial operations there for many years.
4. The NL Companies have been conducting investigation, delineation and/or other remediation of the Property pursuant to an amendment to an Administrative Consent Order signed by NL that became effective November 25, 1997, and under the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 *et seq.* ("ISRA").
5. On _____, 2008, the Department published notice of this proposed Settlement Agreement in compliance with N.J.S.A. § 58:10-23.11e2. The Department also arranged for written notice of the Settlement Agreement to be sent to all other potentially responsible parties of whom the Department had notice. SSA has published legal notices in three newspapers of general circulation in the area of the Property for a period of not less than three days which contained the following information:
 - (a) Name and location of the Property where the discharges occurred: former NL Industries Site, 1000 Chevalier Avenue, Sayreville, New Jersey;

- (b) Parties to the Settlement: Sayreville Seaport Associates, L.P., 2701 Renaissance Boulevard, 4th floor, King of Prussia, Pennsylvania;
 - (c) Summary of the Terms of the Settlement: Pursuant to the terms of a private four-party Settlement Agreement and Release (the "Four-Party Agreement") executed among SSA, NL, SERA and the County of Middlesex (the "County") to which the Department is not a signatory and is not bound by any of its terms, SSA has, among other things, agreed to contribute \$8 million, which includes a \$2 million contribution from NL, towards the acquisition by the County of 59.6 acres of real Property and 23.5 acres of open water with tidelands grant (totalling 83.1 acres), referred to as "Parcel A," which land shall be preserved in perpetuity for open space and recreational purposes. Solely for purposes of this Settlement Agreement, \$1 million of this \$8 Million contribution shall be allocated to and act as payment for SSA's alleged liability resulting from discharges at the Property for (1) the remediation of the Property; (2) the remediation of the tidal wetlands at the Property; and (3) the remediation of the Raritan River. In addition, SSA shall arrange for a conservation easement to be recorded for that portion of the real property on Parcel A that SSA's \$8 million contribution is purchasing (21.8 acres).
 - (d) Public notice will be published in the New Jersey Register on August 4, 2008.
- 6. On _____, 2008, the Department notified SSA that it had received no comments that disclosed facts or considerations that indicated to the Department, in its sole discretion, that the Settlement Agreement was inappropriate, improper, or inadequate.
 - 7. The Parties desire to enter into this Settlement Agreement to resolve the potential environmental liabilities and obligations of SSA arising from the pre-acquisition activities at the Property, including, without limitation, to resolve any potential liabilities and obligations for remediation of possible discharges, releases and/or migration of contamination from 1000 Chevalier Avenue to off-site locations, including without limitation, to the Raritan River.
 - 8. The Department is entering into this Settlement Agreement pursuant to the authority vested in the Administrator of the New Jersey Spill Compensation Fund by the Spill Act and in the Commissioner of the NJDEP or her authorized designee by N.J.S.A. 13:1D-1 et seq. and the Spill Act.
 - 9. By entering into this Settlement Agreement, SSA neither admits nor denies any of the Findings of the Department. This Settlement Agreement shall not constitute, or be interpreted or used as an admission of fault, liability, law or fact, nor shall it be admissible in any proceedings as such, except only to the limited extent necessary to enforce the provisions of this Settlement Agreement or to establish the scope of the release or contribution provisions of this Settlement Agreement.

10. The Parties to this Settlement Agreement have negotiated this Settlement Agreement in good faith and recognize that the settlement is fair, reasonable and in the public interest.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

SETTLEMENT PAYMENT/ COVENANT NOT TO SUE

11. In accordance with the terms of the Four-Party Agreement, on February 1, 2009, or the date upon which the closing for the acquisition of 83.1 acres of the Property referred to as "Parcel A" (referenced on attached map, Appendix C) occurs, SSA shall contribute \$8 million toward the acquisition by the County of Parcel A, which land shall be preserved in perpetuity for open space and recreational purposes. The contribution of \$8 million is inclusive of \$2 million being provided by NL. Solely for purposes of this Settlement Agreement, \$1 million of that amount shall be allocated to and act as payment for SSA's alleged liability resulting from discharges at the Property for: (i) the remediation of the Property; (ii) the remediation of the tidal wetlands at the Property; and (iii) the remediation of the Raritan River. The Department acknowledges that this contribution is being made based on the Four-Party Agreement to which the Department is not a signatory. The Parties agree that no term contained within that Four-Party Agreement binds the Department in any way to the obligations contained therein.
12. In consideration of the agreement by SSA to make payment according to the terms of paragraph 11, above, and except as otherwise provided herein, the Department fully and forever covenants not to sue and agrees not to take administrative or judicial action against SSA, any of its officers, directors, employees, predecessors, parents, successors, and subsidiaries for any and all of the Department's causes of action under the Spill Act and for any liability and/or any obligation for investigation and/or remediation of releases, discharges and/or migration of hazardous substances or pollutants or contaminants from the Property to tidal wetlands and off-site locations, including, without limitation, into the Raritan River.
13. The covenant contained in paragraph 12, above, shall take effect as follows:
 - (a) as to alleged liability for tidal wetlands at the Property and for the Raritan River, the covenant shall take effect upon (1) confirmation by SSA to the Department in writing and with adequate substantiating documentation that the \$8 million contribution toward the purchase of Parcel A has been made; and (2) confirmation from SSA to the Department that the conservation easement for Parcel A has been recorded with the Clerk of Middlesex County by providing a copy of the recorded easement to the Department.

- (b) as to alleged liability for the Property, the covenant shall take effect upon the occurrence of all of the following: (1) confirmation by SSA to the Department in writing and with adequate substantiating documentation that the \$8 million contribution toward the purchase of Parcel A has been made; (2) confirmation from SSA to the Department that the conservation easement for Parcel A has been recorded with the Clerk of Middlesex County by providing a copy of the recorded easement to the Department; and (3) transfer of title to SSA of a Parcel of the Property or a portion of a Parcel for which the Department has issued a No Further Action letter(s) evidencing that all discharges at the Parcel or portion thereof have been remediated to the satisfaction of the Department.
14. The Department reserves, and this Settlement Agreement is without prejudice to, all rights against SSA with respect to: (1) the completion of the remediation of the discharges at the Property to the extent that SSA becomes the remediating party; and (2) claims based on a failure by SSA to meet any requirement of this Settlement Agreement. The covenant contained in paragraph 12, above, does not address any liability for future contamination attributable to SSA's activities at the Property and not related to any contamination for which SSA is otherwise exempt from liability under N.J.S.A. 58:10-23.11f22. SSA reserves all rights, remedies and defenses with respect to any action the Department may take in connection with such future conduct.
15. This Settlement Agreement constitutes an administratively approved settlement within the meaning of N.J.S.A. § 58:10-23.11f.a(2)(b) and 42 U.S.C. § 9613(f)(2) for the purpose of providing protection from contribution actions or claims for cleanup and removal costs. SSA has resolved its liability for cleanup and removal costs with the Department. SSA shall not be liable for claims for contribution regarding matters addressed in this Settlement Agreement.
16. In any subsequent administrative or judicial proceeding initiated by the Department for injunctive relief, recovery of costs and/or damages, or other appropriate relief concerning the Property, SSA shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, the entire controversy doctrine or other defenses based upon any contention that the claims the Department raises in the subsequent proceeding were or should have been brought in this case; provided, however, that nothing in this paragraph affects the enforceability of the covenants set forth in this Settlement Agreement.

GENERAL PROVISIONS

17. Whenever written notice or other documents are required to be submitted by one party to another, they shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other party in writing.

For the Department:

Len Romino, Assistant Director
Site Remediation Program
New Jersey Department of Environmental Protection
401 E. State Street
P.O. Box 028
Trenton, New Jersey 08625-0028

For Sayreville Seaport Associates, L.P.

Jonathan H. Spergel, Esq.
Manko, Gold, Katcher & Fox LLP
401 City Avenue
Suite 500
Bala Cynwyd, Pennsylvania 19004

All notices and other submissions shall be sent by certified mail (postage prepaid, return receipt requested) or by recognized overnight delivery or courier service (with charges prepaid), and shall be considered effective upon receipt, unless otherwise provided in this Settlement Agreement.

18. Nothing contained in this Settlement Agreement shall be considered an admission by SSA or a finding by the Department of any wrongdoing or liability on the part of SSA.

GENERAL PROVISIONS

19. This Settlement Agreement represents the complete agreement of the Parties with respect to SSA's alleged liability resulting from discharges at the Property for: (1) the remediation of the Property; (2) remediation of the tidal wetlands at the Property; and (3) remediation of the Raritan River. This Settlement Agreement supersedes all prior agreements, understandings, promises and representations made by the Parties concerning the subject matter hereof. This Settlement Agreement may not be amended, modified, supplemented or waived, in whole or in part, except by written amendment duly executed by SSA and the Department.
20. Nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Settlement Agreement. Except as specifically set forth herein, this Settlement Agreement applies to, and is binding upon, the Department, SSA and their respective successors and assigns.
21. If SSA fails to comply with paragraphs 11 and 13, above, the Department reserves its rights to terminate this Settlement Agreement withdraw its offer to settle as provided herein, not issue the covenant not to sue, and pursue any other actions.
22. SSA agrees to comply with this Settlement Agreement which shall be fully enforceable as an Order in the New Jersey Superior Court pursuant to the Department's statutory authority.

23. This Settlement Agreement shall be binding, jointly and severally, on SSA, its successors, assignees and any trustee in bankruptcy or receiver appointed pursuant to a proceeding in law or equity. No change in the ownership or corporate status of SSA or the ownership of the Property shall alter SSA's responsibilities under this Settlement Agreement.
24. SSA waives its rights to an administrative hearing concerning the entry of this Settlement Agreement.
25. This Settlement Agreement shall be governed by and interpreted under the laws of the State of New Jersey.
26. Each of the undersigned representatives of SSA and the Department hereby represents and warrants that he or she is authorized to enter into the terms and conditions of this Settlement Agreement and to execute and legally bind his or her respective Party to this Settlement Agreement.
27. This Settlement Agreement may be signed and dated in any number of counterparts, each of which shall be an original, and such counterparts shall together be one and the same Settlement Agreement.
28. This Settlement Agreement shall be effective upon the execution of this Settlement Agreement by the Department and SSA and closing on SSA's acquisition of the "C Parcels" (described and identified at Appendix ____). In the event SSA does not close on the C Parcels within forty-five (45) days after the Initial Closing date specified in the Four-Party Agreement (August 1, 2008), this Settlement Agreement shall be null and void.

IN WITNESS WHEREOF, the Parties have hereto executed and delivered this Settlement Agreement as of the day and year first written above.

**NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION**

Dated:

By: _____
Irene Kropp, Assistant Commissioner
Site Remediation

NEW JERSEY SPILL COMPENSATION FUND

Dated:

By: _____
Anthony J. Farro, Administrator

SAYREVILLE SEAPORT ASSOCIATES, L.P.

By: _____
Name:
Title:

